

### **REMARKS**

Reconsideration of the application and claims in light of the foregoing amendments and following remarks is respectfully requested.

#### **Status of the Claims:**

Claims 2-6, 8-13, 15-39 and 41-47 are currently pending. Claims 1, 7, 14 and 40 were previously cancelled without prejudice or disclaimer of the subject matter contained therein. Claims 45-47 are amended to further clarify what is being claimed and to place them in better form. No new matter is added. Support for the amendments can be found, e.g., in paragraph [0014] of the originally-filed specification.

#### **Provisional Double Patenting Rejection:**

The Examiner has indicated that claims 2-6, 8-13, 15-26, 30-39 and 41-47 are provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-33 of co-pending Application No. 10/630,378. Since this rejection is provisional, response is respectfully deferred until some of the allegedly conflicting claims are allowed.

#### **Rejections under 35 U.S.C. § 102:**

Claims 2, 4-13, 15-26, 30-33, 36, 38-41 and 43-47 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,568,587 to Yamada et al. ("Yamada"). This rejection is respectfully traversed.

Independent claim 46 has been amended to recite that "contents of the container can be seen through the continuous container wall regardless of an orientation of the container." Similarly, independent claims 45 and 47 have been amended to recite that the continuous container wall "is transparent such that contents of the container can be seen from all sides of the continuous container wall" and "is entirely formed from multiple layers of at least one

temperature stable compound which is transparent,” respectively. It is respectfully submitted that Yamada fails to disclose at least these features.

By contrast, Yamada describes a container formed from a paper sheet-like blank having a transparent inner layer that is surrounded by an outside member made of paperboard. *See Yamada, col. 2, lines 50-60*. The paper sheet like blank is folded upon itself and pasted at each side along side margins. *See Yamada, col. 1, lines 55-61*. As seen in Figure 10, the container wall of Yamada is broken along each of the side margins. Thus, the blank of Yamada does not form a continuous container wall as required by the present claims. Further, while Yamada describes a window disposed in a middle section of a side wall face, the degree to which the contents of the container can be seen through the container wall is severely limited since “[t]he window extending to the bottom of the container would result in deterioration of the container’s shape-retainability.” *See Yamada, col. 4, lines 36-38*. Thus, Yamada does not disclose a container whose contents can be seen through the continuous container wall from all sides as presently recited in claims 45 and 46, much less a container wall formed entirely from a transparent compound as presently recited in claim 47.

Additionally, independent claims 45-47 additionally recite that the withdrawal opening is “surrounded by a bent opening edge.” It is respectfully submitted that Yamada fails to disclose such a feature; rather, the withdrawal opening of Yamada is surrounded by a flat opening edge.

Since Yamada fails to disclose at least the above-recited features called for in claims 45-47, and claims 2, 4-13, 15-26, 30-33, 36, 38-41, 43 and 44 depending directly or indirectly from claim 46, it cannot anticipate these claims. Reconsideration and withdrawal of the rejections of claims 2, 4-13, 15-26, 30-33, 36, 38-41 and 43-47 under 35 U.S.C. 102(b) is therefore respectfully requested.

**Rejections under 35 U.S.C. § 103:**

Claim 3 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Yamada in view of U.S. Patent No. 5,078,313 to Matheson et al. ("Matheson"). Claims 27 and 28 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Yamada in view of U.S. Patent No. 1,654,318 to Benson ("Benson"). Claim 29 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Yamada in view of U.S. Patent No. 2,170,060 to Meyer ("Meyer"). Claims 34 and 35 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Yamada in view of U.S. Patent No. 6,210,766 to McLaughlin ("McLaughlin"). Claim 37 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Yamada in view of U.S. Patent No. 2,689,424 to Clagett. Claim 42 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Yamada in view of U.S. Patent No. 4,574,987 to Halligan et al. ("Halligan"). These rejections are respectfully traversed.

The foregoing cited references, whether taken alone or in combination, do not disclose or suggest a dimensionally stable container having a continuous container wall through which the contents of the container can be seen from all sides and other features as presently recited in independent claims 45-47. Rather, as set forth above, the transparent inner layer of Yamada requires lamination to the paperboard outer layer for dimensional stability, allowing for only a small window in the center of a side wall without losing shape-retainability. *See Yamada, col. 4, lines 36-38 and col. 5, lines 10-15.* Matheson describes a wax-coated paperboard container; no wall is transparent, nor are any windows provided. *See Matheson, Abstract.* Likewise, Benson is directed to a drinking cup made from paper stock, which is not a transparent material and does not provide dimensional stability and fluid tightness over Applicant's claimed temperature range. *See Benson, col. 1, lines 1-5.* Similarly, Meyer describes a box formed from cellophane which is transparent, but does not provide dimensional stability and fluid tightness over Applicant's claimed temperature range; in fact, providing a bead at the base of the box containing an ornamental rope seems to indicate that the box is not fluid-tight at all. *See Meyer, col. 1, lines 4-8 and 46-53.* McLaughlin is directed to method of decorating tube containers for lotions, ointments and the like which are squeezed out of the container. *See McLaughlin, Figure 3 and*

*col. 1, lines 32-36.* Such tube containers are not dimensionally stable since they change shape each time a force applied, and retain that shape after the force has been removed. Likewise, Halligan describes a container that is squeezed by a consumer to extrude food contained therein; similar to the toothpaste-like tubes of McLaughlin, the container of Halligan changes shape each time it is squeezed and food is extruded. *See Halligan, col. 1, line 6-20 and lines 36-41.*

Thus, it is respectfully submitted that independent claim 46 would not have been obvious from the teachings of the cited references, and that its dependent claims 3, 27-29, 34, 35, 37 and 42, are also not obvious for at least this reason. Reconsideration and withdrawal of the rejections of claims 3, 27-29, 34, 35, 37 and 42 under 35 U.S.C. 103(a) is therefore respectfully requested.

**CONCLUSION**

In view of the foregoing amendments and arguments, the subsisting claims in this application are believed to be in condition for allowance and such action is earnestly solicited.

If there are any other issues remaining which the Examiner believes could be resolved through either a Supplemental Response or an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned at the telephone number set forth below.

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Respectfully submitted,

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